IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 6289 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DHOLKA NAGARPALIKA

VERSUS

GEB

Appearance:

MR RA PATEL for the Petitioner

MS MANISHA LAVKUMAR AGP for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 29/09/2000

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner, Dholka Nagarpalika is a constitutional authority. The challenge has been made by the petitioner to the notice of the respondent No.1 under which the petitioner is called upon to pay Rs.93,42,928=06 ps. towards dues of the electricity charges within a period of 24 hours failing which it is stated that the electricity connection of the petitioner shall be disconnected. The petitioner prayed for issuance of writ of mandamus or any other appropriate writ, order or direction directing the respondents not to disconnect the power supply of the petitioner-Nagarpalika as per aforesaid notice and for direction to the respondent No.2-State of Gujarat to grant aforesaid amount as per the policy decision taken by the State Government in favour of the village Panchayat and also to make grant for the energy bill issued by the respondent No.1 against the petitioner for rendering the essential services to the citizens of Nagarpalika.

#. This court has protected the petitioner by grant of interim relief on deposit of Rs.2 lacs as against this demand of Rs.93 lacs and odd. The notice was issued in this case on 5.8.98 and, thereafter this matter was admitted on 3.2.1999. None of the respondents has cared to file reply to the Special Civil Application. It is really shocking that even in such matters, the State of Gujarat as well as Electricity Board are not taking any interest. For want of reply this petition can be accepted as uncontested and if it is so ordered, heavy liability of crores of rupees will fall on State Government for payment of the electricity dues of the Board. For last more than 6 years I am seeing that in most of the cases, even in the case where heavy stake involved the State Government remains totally unconcerned litigant, unaware of the litigation or as if it has no interest in the matter. What for this approach is there of the officers of the welfare and impersonal State of Gujarat, it is difficult to understand nor it is ever made known to the court by the Government. At one time on being asked by the court the Additional Advocate General has gave out the figures of the amount which has been allotted in the State budget for litigations filed by or against the State Government in the courts. That figure is for the last financial year and it was as my memory goes was Rs.1,19,00,000/=. Despite of spending such a huge amount of peoples' money which otherwise could have been used for the welfare of the citizens if this is the only contribution of the State of Gujarat, then larger question does arise what for this heavy amount to be set under this head. If the courts are to decide the matters without reply of the matters by the

State Government then this amount has to be saved by it and to be diverted and used for other cause of the people. In case the reply to the Special Civil Application is not filed, the Government Advocate who puts appearance in the matter is totally handicapped and would not be in a position to effectively put the defence on behalf of the State of Gujarat on factual aspects of the matter. In cases not only question of law arise but in almost all the cases the question of facts or mix questions of law and facts are there for which the reply is very essentially. It appears that the officers of the State of Gujarat are not aware of the principle of the pleadings i.e. where the averments made in the pleadings if are not denied or controverted by filing reply the same are to be taken to be correct or taken deemed to have been admitted by the other side. So far as question of law is concerned even if the reply is not filed it cannot be taken to be as if admitted or deemed to be admitted by the State of Government. In such cases the court can decide the matter without reply. It appears that at the high level officers who are sitting at Gandhinagar may not be knowing of all these lackings, shortcomings and shortfalls in presentation of the defence on behalf of the State of Gujarat by its officers in the courts. It is advisable that some officer from Law Department of the judicial cadre may remain present in the court throughout the day and report to the higher officers in the hierarchy in the departments how the litigations are being taken in the courts on behalf of the State Government by its officers, who are highly paid. Every day report has to be made and only then the officer may be known of the realities. For want of reply, briefs, information, instruction and proper briefing to the Government Advocates by the officers of the State of Gujarat many times cases are to be adjourned. One of the major causes of delay in deciding the matters is this approach, attitude and culture of the officers of the State of Gujarat an impersonal machinery.

#. It is unfortunate that the peoples blame to the courts that they make inordinate delay in deciding the matters. There are many causes for delay in decision of the cases but one of the major cause is this total noncooperative attitude of the State of Gujarat, which is unfortunately the biggest litigant in courts. In case, live telecast of the court proceedings are there then the peoples may not blame the courts for delay in deciding the cases. If this is there, then the peoples will know how the peoples money is utilised by the State of Gujarat under the head of defending or filing of the litigations in the court. Accountability of the officers to the

peoples is not there and that may be one of the major causes that nobody is bothering for filing of the replies to the Special Civil Application or to properly assist and brief the Government advocates. For want of reply many a times the Government may lose good cases. Recently I came across with a case where for want of Government reply that matter would have been allowed and the Government has to pay heavily for it. But this court has not considered it to be proper to proceed in that matter without reply and thought it fit to call the Collector of the district concerned with the relevant record. The District Collector remained present in the court and when he was given out the facts of the case it is really shocking that the petitioner could manage his appointment on the basis of forged document and on detection of the same his services were terminated immediately. The reasons were not given for the termination of the service of the petitioner in that case in the impugned order nor same are furnished by filing the reply to the Special Civil Application and naturally for want of reply the court has to allow that petition. This may not be only one case. There may be hundreds of cases in which for want of reply on behalf of the State Government the courts may have giving judgment against it.

#. In the case in hand the petitioner putting all the responsibility and obligation on the State Government for payment of electricity bills under some Government policy taken for the village panchayats. The petitioner very conveniently has not produced that policy on the record also. For want of reply by the State whatever is stated by the petitioner has to be taken as correct and admitted by it. Orally the learned counsel for the State has given out that there is no such policy of the government. Be that as it may. The Board is also a statutory body and it provides essential services i.e. supplying electricity to the citizens of the State. Electricity is not a luxury but is a bare necessity of the life. In case where this heavy amount of electricity charges are not paid to the Board by the gram Panchayat or taluka Panchayat or by district Panchayat or any other constitutional or statutory body what ultimately the fate of the Board is a matter of realisation. It is said though I do not know how far it is correct that the Gujarat Electricity Board is under heavy debts. Whatever the experience I have while dealing with the cases in the court it is certain that crores of rupees of the Board are due against the industries or constitutional bodies.

Thefts of electricity worth crores of rupees are being made and when the recoveries are ordered it is not easy for Board to make it for many reasons and one of the reason may be that they are approaching to the court and courts are protecting them by granting interim relief. This demand of the Board is not disputed by the petitioner. What is in dispute is that it is not its liability. It desires to shift and transfer this liability to the State of Gujarat and that too under some policy decision which is not on the record. Whether it is the liability of the State of Gujarat or not is a matter to be taken care of by the State. It is a dispute in between a constitutional authority and State of Gujarat. The Board is constituted under the statute. Such a dispute otherwise also is difficult to entertain by the courts directly and for this fruitfully reference may have to the decision of the apex court in the case of ONGC Vs. Collector Central Excise JT 1991(4) SC 158. Time and again this court has in many cases given direction to the State of Gujarat through the Chief Secretary for constitution of High Power Committee for adjudication of the disputes in between one department and another department of the State of Gujarat, in between the constitutional or statutory authorities or statutory corporations and the State or vice versa on the line as what it is suggested by the Hon'ble Supreme Court of India in the case of ONGC Vs. Collector, Central Excise (supra). Though that case relates to the dispute between ONGC and Central Government department but the principles laid down therein can equally be applied to the State Government also. If it is done inflow of the cases to the courts will certainly be reduced and that will ultimately in the larger interest of the public. For want of reply from the State of Gujarat otherwise also I do not consider it to be a fit case to decide the same on merits.

#. Interest of justice will be served in case this petition is disposed of with the directions :-

1) The petitioner to present a detailed representation in respect of its grievances made in this Special Civil Application to the State of Gujarat through the Chief Secretary within a period of one month from today.

2) On receipt of the representation of the petitioner, the Chief Secretary shall constitute high power committee under its

Chairmanship with other 3 members not below the rank of Additional Chief Secretaries. The committee shall decide this representation of the petitioner after giving notice to the Gujarat Electricity Board . It is also expected of the Chief Secretary that he will see that some responsible officer remain present on behalf of the Gujarat Electricity Board before the Committee.

3) This representation be decided by the Committee within a period of 3 months from the date of the receipt thereof by passing a reasoned order. If either of the parties to this petition is not satisfied with this decision of the high power committee, then it is free to approach to the appropriate legal redressal forum available in the matter.

#. Interim relief granted by this court shall continue till the decision given in the matter by the high power committee. In case within a period of one month from today the representation is not presented by the petitioner to the Chief Secretary the interim relief granted by the court shall stand vacated automatically. Rule stands disposed of accordingly with no order as to costs.

(S.K.Keshote, J.)

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